

Appeal from decision of Oregon State Office, Bureau of Land Management, dismissing a protest against a dependent resurvey. Group No. 1044, Oregon.

Affirmed.

1. Secretary of the Interior -- Surveys of Public Lands: Authority to Make

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys, and making resurveys to reestablish corners and lines of earlier official surveys.

2. Surveys of Public Lands: Dependent Resurveys

The purpose of a dependent resurvey is to retrace and reestablish lines of the original survey in their true and original positions according to the best available evidence of the positions of the original corners.

3. Surveys of Public Lands: Generally -- Surveys of Public Lands: Dependent Resurveys

Locations of corners established by official Government surveys are conclusive, and the corner of a Government subdivision is where the United States survey established it.

4. Surveys of Public Lands: Dependent Resurveys

Where the reestablishment of a section corner in a resurvey is supported by substantial evidence, a protest asserting improprieties in the survey is properly dismissed and does not necessarily warrant a further investigation of the corner.

APPEARANCES: Mrs. John Koopmans, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Mr. and Mrs. John Koopmans appeal the July 1, 1982, decision of the Oregon State Office, Bureau of Land Management (BLM), which dismissed their protest against a dependent resurvey affecting patented lands in sec. 2, T. 29 S., R. 7 W., Willamette meridian, Group No. 1044, Oregon.

[1] Authority of the Secretary to conduct surveys of the public lands of the United States derives from 43 U.S.C. § 2 (1976). "The Secretary of the Interior or such officer as he may designate shall perform all executive duties appertaining to the surveying * * * of the public lands of the United States * * *." See also 43 U.S.C. § 1201 (1976). The rules of survey are set out in 43 U.S.C. §§ 751, 752, and 753 (1976). Authority for making resurveys is contained in 43 U.S.C. § 773 (1976).

Cadastral surveys in general create, reestablish, mark, and define boundaries of tracts of land. Such surveys -- unlike scientific surveys of an informative character which may be amended with changing conditions, or because they are not executed according to the standards now required for accuracy -- cannot be ignored, repudiated, altered, or corrected, and the boundaries created or reestablished cannot be changed so long as they control rights vested in the lands affected. The official record of a cadastral survey ordinarily consists of a drawing or map and a written description of the fieldwork. The drawing represents the lines surveyed, showing the direction and length of each of such lines; the boundaries, descriptions, and area of the parcel of land; and, as far as practicable, a delineation of the culture and improvements within the limits of the survey.

Administrative surveys are not based on necessary statutory authority to establish or reestablish the boundaries of Federal lands, and they do not result in the filing of field notes and plats in the public land records. They do not establish legal ownership boundaries for title and/or taxation purposes. In general, administrative surveys are made to identify boundary lines of ownership previously established by a cadastral survey (Federal) or property line survey executed under the laws of a State or other authorized political entity. No legal property corner monuments are established or reestablished by the administrative process.

A resurvey is a reconstruction of land boundaries and subdivisions accomplished by rerunning and re-marking the lines represented in the field

note record or on the plat of a previous official survey. The field note record of the resurvey includes a description of the technical manner in which the resurvey was made, full reference to recovered evidence of the previous survey or surveys, and a complete description of the work performed and monuments established. The resurvey, like an original survey, is subject to the approval of the directing authority.

[2] A dependent resurvey is a retracement and reestablishment of the lines of the original survey in their true original positions according to the best available evidence of the positions of the original corners. The section lines and lines of legal subdivision of the dependent resurvey in themselves represent the best possible identification of the true legal boundaries of lands patented on the basis of the plat of the original survey. In legal contemplation and in fact, the lands contained in a certain section of the original survey and the lands contained in the corresponding section of the dependent resurvey are identical.

Acting under properly delegated authority, the Oregon State Director issued special instructions on December 8, 1980, directing a retracement and dependent resurvey of a portion of the north boundary of T. 29 S., R. 7 W., Willamette meridian, Oregon, and subdivisional lines in the township, and the subdivision of secs. 3, 23, and 33 to the extent necessary to delineate the Federal public lands therein. The retracements and resurveys were to be made in the manner described in the Manual of Instructions for the Survey of Public Lands of the United States (1973) (Manual).

The prior surveys of the township conducted by the Government cadastral surveyors disclose the following facts which are not in dispute: The boundaries of the township and a portion of the subdivisional lines were surveyed by Nathaniel Ford in 1854, as shown on the official plat of survey approved March 9, 1855; a portion of the east and south boundaries of the township were dependently resurveyed and the remaining subdivisional lines were surveyed by Roy T. Campbell in 1910, as shown on the official plat of survey approved April 5, 1911. Other resurveys not affecting secs. 2 or 3 are depicted on official plats of survey accepted June 29, 1906; February 15, 1926; August 21, 1956; July 11, 1958; February 9, 1961; June 5, 1970; and June 21, 1978.

Following their work in the field, between January 6, 1981, and April 24, 1981, James E. Jelley and Wayne L. Rogers, Cadastral Surveyors employed by BLM, prepared field notes and a plat of their dependent resurvey in T. 29 S., R. 7 W. The field notes and a plat of survey were accepted on behalf of the Director, BLM, March 18, 1982. Thereafter the Koopmans protested.

Appellants, in their statement of reasons, make the following arguments:

[The] appeal lies based on two major issues:

(1) The integrity of the section corner of Sections 2, 3, 34, & 35 and, therefore, the integrity of the boundary line as

established by the cadastral resurvey of 1981 commencing South from that section corner; and

(2) The right of B.L.M. to move previously-established boundary lines on private property. Part of this issue relates to the "1975 Administrative Survey" which established a BLM-tagged boundary line . . . a survey on private property, documented by official survey stakes, a clearly-defined brush-cut line and at least 10 official boundary marker tree tags on our property alone. With regard to the section corner of sections 2, 3, 34, and 35, enclosed is Exhibit A, a copy of the official records of the Douglas County Surveyor's Office for April 1961. Please note, with regard to the subject section corner:

Original 30", now 40" down Oak. We open & find good reverse scribing, "B" (Record S73 degrees E. 159.7 ft.) We find should be S.59 degrees E. 120.0 ft. If we use record dist. & bear. to locate Sec. Cor. from SE BT. it wouldn't check with Real old Stump Section in NW Quad.

Regarding the same section corner, enclosed is Exhibit B, a copy of the official Douglas County Surveyor's Office for October 1975. Please note,

A 40" down Oak in the S.E. Quadrant with visible scribe marks does not fit calls."

Please also note that both of these surveys refer to a "GEARED" axle, first noted in 1961 and referred to as "generally accepted" in 1975. The conflicting readings in both surveys CONFLICT WITH THE AXLE.

According to records on file, the subject section corner was first set by U.S. Deputy Surveyor Nathaniel Ford in 1854 with a post and tied in to four bearing trees. (Exhibit C is the Douglas County Surveyor's Office record of this.) "In 1899, Oscar F. Thiel, Deputy County Surveyor, found the corner position perpetuated by person(s) unknown with a steel axle, 1-1/2 inches diameter, firmly set, projecting 5 inches above ground." He made no mention whatsoever of bearing trees not matching the location.

In that there were no geared axles in 1899, obviously it is not the same axle. The geared axle was tied into a fence line and I propose that either it was a matter of convenience to secure the fence or measured from the one bearing tree and placed (whether intentionally or unintentionally) to such a location that gave that landowner an additional strip of land. But my point is that this "geared" axle just appeared at somewhat the same time frame that timber became a valuable resource rather than an obstacle that had to be cleared. Certainly in the early days of automobiles, it would have too valuable to plant in the ground -- it would have to have been (I would propose) sometime

after World War II. If the axle were available today, perhaps its vintage could be investigated.

In the early 1981, B.L.M. set an official section corner marker (actually 5 brass markers) in the location where the "geared axle" had been and they removed the axle. It has not been seen since . . . to say nothing of the steel axle 1-1/2 inches set in 1899.

I would even go so far as to propose that whoever set the geared axle knew only that that corner had at one time been marked by an "axle" and a vehicle axle was the only "axle" to his knowledge and in order to claim an additional strip of land, he had to set "an axle."

There were two documented bearing trees, one in the Southeast quadrant and one in the Northwest quadrant. In actual fact, the geared axle found in 1957 was off from any call to any bearing tree. (Ref: Goodwin 10/21/75 . . . tree was 133.4 ft; call was 132.0 ft.)

I believe that the point 58 feet west of the geared axle is, in fact, the true corner and is the point that was used to place the boundary markers across our property line. I am confident that if the markers were a result of a BLM survey in 1975, then the field notes from that survey would provide the "clear and convincing" evidence that we are seeking.

I further believe that the field notes were intentionally and maliciously destroyed to assure that the carelessness and ruthless administration of the Roseburg B.L.M. office would not come to light. The destruction of all records pertaining to this survey were not merely an "unfortunate" happenstance as stated by manager Jim Hart. It was simply the logical extension of his act of ripping the tags from the trees the day after our visit to his office when I personally told him there was a documented tagged line.

I now truly believe that behind B.L.M. closed doors in early 1981, it was known that Baughman's survey in 1981 and the quarter corner marker set at that time were in error because the section corner was in error. In an unguarded moment this was disclosed. Attorney Don Dole (Neuner, Dole, Caley & Kolberg, 810 SE Douglas Street, Roseburg, OR 97470, PH (503-673-5541) on 2/19/81, placed a phone call to the cadastral office of B.L.M. He spoke with Wayne Rogers, cadastral surveyor, member of the team doing the resurvey. Mr. Rogers stated within my hearing that "they knew there is error in the quarter corner as set by Baughman, but they were going to let it stand." After the phone conversation had ended, Mr. Dole repeated those exact same words to me and I wrote them down. When I have repeatedly asked B.L.M. to explain that remark, their response is "It is impossible to comment."

Another interesting occurrence at the subject section corner: I hired a registered surveyor to plot for me, exactly where the corner should have been if the surveyors had ignored the geared axle and used the two documented bearing trees. From that point, we looked for the other two bearing trees which had been established in 1854. The NW quadrant was cleared -- has been a pasture for many years. The SW quadrant, however, revealed a Black Oak tree in the creek bed, the proper size and proper distance (for the time span) as described in Exhibit C. The difficulty was that the tree is now a beautiful healthy tree and much prized by the owner of the property. (Owners: Paul Hoot and Mo Jorgensen, 1860 Hoover Hill Road, Winston, OR 97496, PH (503) 679-4126) I arranged with Ms. Jorgensen for the County Surveyor's Office to cut into the tree "provided we did not kill the tree." On the appointed morning, I went to the owner's house and she came with me to watch. As we approached the tree -- and I had said nothing to her about this tree ever being acknowledged as an official tree -- with the crew from the Surveyor's Office in hearing distance, she stopped and said "Where is the TAG?" (There had been no mention of a tag.) That tree had been tagged as a bearing tree and the tag is now gone, although the nail holes are clearly visible. The Surveyor's Office said by the growth rings, the tree was proper size; however, the cut did not locate scribe markings. The owners will not give us permission to fell the tree to dissect it; but it had been marked as a bearing tree, further confirming our position that the tagged line was correct.

With regard to the angle of the section line between sections 2 and 3, I wish to submit Exhibit D, letter from William Leavell, State Director of B.L.M. to Senator Hatfield dated March 26, 1981. Mr. Leavell states:

The east boundary of section 2 (the line between sections 1 and 2) has been retraced several times . . . each survey shows the line between sections 1 and 2 to bear several degrees east of north. I have mentioned the line between sections 1 and 2 to show it, too does not bear north.

Mr. Leavell argues that because of this, the section line between sections 2 and 3 should also bear several degrees east of north, thus parallel to the line between sections 1 and 2. However, he ignores the fact that the section line between sections 3 and 4 bears several degrees west of north.

Further, Mr. Leavell states:

. . . a N 1/16 section corner of sections 2 and 3 was established at a position which conforms to the methods outlined in the Manual of Instructions for the Survey of the Public Lands of the United States. This corner point is located four feet southwest of a

very old fence intersection from which fences extend north, south, east, and west.

...

In summary, all surveys from 1923 indicate that the north and south lines involved in sections 1, 2, and 3 bear several degrees east of north. Old fence lines within sections 2 and 3 also indicate that earlier surveyors and landowners were aware of this condition.

Both of these points are untrue. The fence "intersection" which he refers to at the N 1/16 (the northwest corner of our property) is in the configuration of a letter "K" and while the 'spine' of the "K" does go along the north of our property line, at no point does any of the fence come onto our property. There IS NO FENCE running South onto our property, no evidence whatsoever of there ever being any. It is obvious by the lay of the land that the fence was placed by convenience, not as a boundary corner, from that point to the tagged corner, the contour is very steep. To use that as a corner as the 1981 resurvey has done, brings the property line down approximately 300 feet into our property. In a conversation on our behalf, George Stubbett (City Manager, City of Roseburg, 900 SE Douglas Street, Roseburg, OR 97470, PH (503) 672-7701) asked B.L.M. Manager Jim Hart about this severe angle into our land. Mr. Hart's response was that the line righted itself back to the east as it moved down the remainder of the hill.

It is a known fact that fences do not hold in very steep terrain. It is also known that early settlers did not particularly covet timberlands. I'll tell you one thing for sure, the old fence on the east side of our property does not veer to the east in this manner and no way is that property owner going to move over to compensate our loss to B.L.M.

Regarding the Quarter Corner (our southwest property corner), please note Exhibit E. This is a copy of the sketch drawn for me by cadastral surveyor Jake Jelley in response to my plea for information about witness trees, specifically the witness trees marked by Nathaniel Ford in 1854. (Exhibit F is the County Surveyor's record of this quarter corner marking.) Please notice the similarity between the sketch provided by Mr. Jelley and the photographs which I enclose as Exhibit G. Exhibit G is photographs of the tree referred to in my letter of June 15th, the madrone tree (formerly called laurel) which bore an official tag. In my letter of June 15th, I enclosed a photograph taken in March 1981 showing where a tag had recently been removed from the tree.

The resurvey line as moved by B.L.M. in early 1981 encroaches onto our property approximately 50 feet at the quarter corner.

The boundary tags and the boundary line was examined not only by us and other laymen (real estate people, friends, and family members), it was also closely examined by knowledgeable lumber buyers and logging contractors. Among these I submit Mr. Bob Klusman, Log Buyer from Roseburg Lumber Company (P.O. Box 1088, Roseburg, OR 97470, PH (503) 679-8741). Also, Mr. Larry Welliver, President of Wolf Pack Logging, Inc. (P.O. Box 827, Sutherlin, OR. 97479, PH (503) 459-2685). At no point, did anyone question the legality or the authority of the tags and the line. Please note on the following photograph, taken of only one of the 9 trees which I marked and photographed prior to the B.L.M. crew removing the tags, note there is a survey stake near the tree. The tag on the tree reads:

S-7

May 70

United States Department of the Interior
Bureau of Land Management

BOUNDARY

No timber may be cut or removed without authorization.

T 29 R 7 Sec 3 Line is 1 ft. E.

The number painted on the tree refers to a numbered list which we made by copying the information printed on each tag. I also have photographs of the other 8 trees, each are similarly marked and survey stakes were found relating to each. I felt this act was necessary after our meeting with Mr. Hart and I began to suspect that all was not well when dealing with the B.L.M. office.

I knew 18 months ago that the Portland office of the B.L.M. had decided their boundary line change was irreversible (Conversation Don Dole with Wayne Rogers). The Roseburg office of B.L.M. does not tolerate being challenged. At our meeting with Manager Jim Hart on 2/27/81, my husband and I were told by Mr. Hart that the decision HAD BEEN MADE and further, there was NO APPEAL process available to us. At that meeting, in the presence of Jake Jelley and Wayne Rogers, I told Mr. Hart about the tree tags. He said they meant nothing. I went home from that meeting and marked and photographed the trees. The following day, B.L.M. crews ripped the tags from the trees. Subsequently, all records of the 1975 administrative survey which Mr. Hart said established the tag line, have been purged.

I truly did not anticipate that the B.L.M. office would react in such a manner. I believed they would want the truth and help us in the protection of our property rights. We purchased property in good faith. That property had established boundary lines, clearly delineated brush cut line, survey stakes and documented by official B.L.M. boundary tags. Adjoining property had been timbered to that line as had been property further down the canyon. The only timber not so cut was two properties down from

ours and during the past year, that property also has been timbered to the tagged line. (The owner has close ties with the B.L.M. office, does their contract road work.) We are the ONLY property owner in the entire canyon not to cut to the tagged line.

At each step of our appeal and in each confrontation with the B.L.M., we have been told we must provide clear and convincing evidence that the move of the boundary line is in error. I believe that the evidence I have presented on the section corner does, in fact, establish that. However, B.L.M. has arbitrarily moved the line and maliciously destroyed every shred of "clear and convincing evidence". Should not they have to account for their actions? [Emphasis in original.]

BLM submitted the following reply to appellants' statement of reasons:

Mrs. Koopmans indicates in her letter that her appeal is based on two major issues: (1) the validity of the corner of sections 2, 3, 34, and 35, Tps. 28 and 29 S., R. 7 W., as monumented during the 1981 resurvey, and (2) the 1975 unofficial administrative survey conducted by non-cadastral BLM personnel in the Roseburg District. Although Mrs. Koopmans may feel the administrative survey plays a part in this case, in our opinion her appeal must be limited to the facts of the 1981 cadastral survey and can not be based to any degree on an unofficial administrative survey that had no effect on the procedures that were used to conduct the 1981 cadastral survey. Therefore, our position statement will address only the facts pertaining to the 1981 cadastral survey.

As stated by Mrs. Koopmans, her appeal of the 1981 resurvey is based on "the integrity of the section corner of sections 2, 3, 34, and 35 (Tps. 28 and 29 S., R. 7 W.) and, therefore, the integrity of the boundary line as established by the cadastral resurvey of 1981 commencing South from that section corner."

The corner of sections 2, 3, 34, and 35, Tps. 28 and 29 S., R. 7 W., was established by Nathaniel Ford, U.S. Deputy Surveyor, in 1854, with a post and four bearing tree accessories. Ford's record for this corner states, "Set a post at proper distance for corner of sections 2, 3, 34, and 35, from which

- A W. oak, 30 ins. diam., bears N. 73 degrees E., 200 lks. dist.
- A B. oak, 30 ins. diam., bears S. 73 degrees E., 242 lks. dist.
- A W. oak, 8 ins. diam., bears N. 66 degrees W., 225 lks. dist.
- A B. oak, 15 ins. diam., bears S. 85 degrees W., 426 lks. dist."

In 1899, Oscar F. Thiel, Deputy County Surveyor, found the corner position perpetuated by person(s) unknown with a steel axle, 1-1/2 inches diameter, firmly set, projecting 5 inches above ground. The corner monumented with the axle was accepted and recorded by Arthur Boyer, Registered Engineer No. 1581, in 1957, during his resurvey and subdivision of section 3. James W.

Byron, Deputy County Surveyor, in 1961; Clell Goodwin, Deputy County Surveyor, in 1975; William J. Ruppert, Registered Land Surveyor No. 866, in 1978; and Glenn S. Baughman, Registered Land Surveyor No. 536, in 1980, all recorded and accepted the steel axle as the original section corner. In each case, the remaining original bearing tree, a white oak, 30 inches diameter, bears N. 73 degrees E., 200 links distance, was found and recorded. Goodwin cut into the tree, in 1975, and revealed the scribe marks "BT". Other trees or the remains of trees not of record have been found throughout the years.

At the time of the 1981 resurvey, the only remaining original bearing tree was the white oak, 42 inches diameter, bears N. 73 degrees E., 200 links distance. Search was made for other original trees, but no evidence of them was found to remain. The position of the steel axle at the corner point matched exactly with the original 1854 Ford survey record for bearing and distance from the tree as further verified by the previously mentioned county and private surveyors dating back to 1899. The Manual of Surveying Instructions, Chapter 5-5, states:

"An existent corner is one whose position can be identified by verifying the evidence of the monument or its accessories, by reference to the description in the field notes, or located by an acceptable supplemental survey record, some physical evidence, or testimony."

The corner was accepted and used by our cadastral surveyors according to the above mentioned procedure.

Mrs. Koopmans is apparently placing much emphasis on the origin of the section corner monument and whether or not it is a geared axle or straight axle. The origin of the axle is unknown, but has been in existence prior to 1899, when Thiel found the axle at the corner point. The material or composition of the corner monument is irrelevant in this case. Correct surveying procedure demands that the position monumented with the steel axle must be accepted as the correct corner position since it matches record bearing and distance from the only remaining original bearing tree.

Other statements that Mrs. Koopmans makes in her letter also need to be addressed because of their inconsistencies with the 1981 resurvey record. Mrs. Koopmans states, "In early 1981, BLM set an official section corner marker (actually 5 brass markers) in the location where the 'geared axle' had been and they removed the axle. It has not been seen since, to say nothing of the steel axle 1-1/2 inches set in 1899."

During the 1981 resurvey, the steel axle was removed and in its place, at the corner point, an official BLM iron post monument was set. Four additional iron posts were set as reference

monuments because of the lack of trees or other natural objects to mark as accessories. The steel axle was deposited (buried) alongside the iron post at the corner point, which is proper BLM procedure.

With reference to the 1/4 section corner of sections 2 and 3, Mrs. Koopmans states, "I now truly believe that behind closed doors in early 1981, it was known that Baughman's survey in 1981 (1980) and the quarter corner marker set at that time were in error because the section corner was in error." The fact is that the 1/4 section corner reestablished by Baughman is within 1 link of being at the true corner point. Being well within acceptable BLM limits, Baughman's corner position was accepted as the corner in the 1981 BLM resurvey.

Mrs. Koopmans states that she feels there is original evidence of the 1/4 section corner of sections 2 and 3, and also at a different location than the 1981 BLM iron post at the corner of sections 2, 3, 34, and 35. With regard to this, a meeting was held in June of this year with the Koopmans, their surveyor, Rod Kimberling, and the Chief, Branch of Cadastral Survey, BLM Oregon State Office. A field investigation during this meeting took place to look at evidence that the Koopmans felt could have been original at the two corners in question. There was nothing conclusive found. Only a very small scar on an oak tree near the corner of sections 2, 3, 34, and 35 was found. This scar appeared to be caused by having a fence nailed to it. At the conclusion of the meeting, the Koopmans' surveyor, Mr. Kimberling, explained to the Koopmans that the BLM resurvey appeared proper in every respect, and if they were to be successful in their protest, superior evidence had to be found. To this date, no superior evidence has been uncovered at either section corner.

Mrs. Koopmans also states in her letter that "Mr. Leavell (BLM Oregon State Director) argues that because of this, the section line between sections 2 and 3 should also bear several degrees east of north, thus parallel to the line between sections 1 and 2. However, he ignores the fact that the section line between sections 3 and 4 bears several degrees west of north."

We do not understand why Mrs. Koopmans feels the line between sections 3 and 4 bears several degrees west of north when the 1981 BLM resurvey shows the south one-half mile between sections 3 and 4 to have a bearing of N. 0 degrees 42' E. The north one-half mile between sections 3 and 4 was not retraced by the BLM, but recorded private surveys return the north one-half mile between sections 3 and 4 to be close to cardinal and not several degrees west of north.

In conclusion, we feel that the 1981 BLM resurvey was conducted using proper procedures and could not have been performed in any other manner. The chain of past county and private surveyor's records accepting the corner of sections 2, 3, 34, and

35 as the original corner, together with the original evidence recovered during the 1981 BLM resurvey, are conclusive facts that verify the position monumented by the steel axle to be the original corner of sections 2, 3, 34, and 35. [Emphasis in original.]

The field notes of the resurvey made by Jelley and Rogers contain this description of the section corner for secs. 2 and 3, T. 29 S., R. 7 W., and secs. 34 and 35, T. 28 S., R. 7 W.:

(Restoring the survey by Nathaniel Ford,
U.S. Deputy Surveyor, in 1854)

Beginning at the cor. of secs. 2, 3, 34, and 35, perpetuated by person(s) unknown, recorded by Oscar F. Thiel, Deputy County Surveyor, in 1899; recorded by Arthur Boyer, Registered Engineer No. 1581, in 1957; recorded by James W. Byron, Deputy County Surveyor, in 1961; recorded by Clell Goodwin, Deputy County Surveyor, in 1975; recorded by William J. Ruppert, Registered Land Surveyor No. 866, in 1978; and recorded by Glenn S. Baughman, Registered Land Surveyor No. 536, in 1980, monumented with a steel axle, 1-1/2 ins. diam., firmly set, projecting 5 ins. above ground, from which the only remaining original bearing tree:

An oak, 42 ins. diam., bears N. 73 degrees E., 200 lks. dist., with opened and burned blaze, no marks visible.

and a bearing tree recorded by Boyer, Byron, Goodwin, and Ruppert

An oak, 38 ins. diam., bears N. 25-3/4 degrees W., 621 lks. dist., with healed blaze.

At the corner point

Set an iron post, 28 ins. long, 2-1/2 ins. diam., 24 ins. in the ground, with brass cap mkd.

T 28 S R 7 W
S 34/S 35
S 3/S 2
T 29 S
1981

from which

An iron post, 28 ins. long, 2-1/2 ins. diam., set 24 ins. in the ground, for a reference monument, bears N. 47-1/2 degrees E., 84 lks. dist., with brass cap mkd. RM T28S R7W S35 55.6' to COR 1981 and an arrow pointing to the corner.

An iron post, 28 ins. long, 2-1/2 ins. diam., set 24 ins. in the ground, for a reference monument, bears N. 37 degrees E., 105 lks. dist., with brass cap mkd. RM T29S R7W S2 69.3' to COR 1981 and an arrow pointing to the corner.

An iron post, 28 ins. long, 2-1/2 ins. diam., set 24 ins. in the ground, for a reference monument, bears S. 46 degrees W., 10 lks. dist., with brass cap mkd. RM T29S R7W S3 6.6' to COR 1981 and an arrow pointing to the corner.

An iron post, 28 ins. long, 2-1/2 ins. diam., set 24 ins. in the ground, for a reference monument, bears N. 33 degrees W., 10 lks. dist., with brass cap mkd. RM T28S R7W S34 6.6' to COR 1981 and an arrow pointing to the corner.

Reset axle alongside iron post.

Corner is located on W. shoulder of gravelled road, 40 lks. wide, bears generally N. and S., and in a woven wire fence, extending N. and S.

Appellants seem to stress that Byron, in 1961, in checking the corner for 2, 3, 34, and 35 found a "geared axle" at the corner location and reported a 36-inch white oak (originally 30 inches) N. 73 degrees E., 132 feet, showing a good scar. He further reported a down 40 inch oak (originally 30 inches) which he opened and found a good reverse scribing. Record distance of the original bearing tree was S. 73 degrees E., 159.7 feet, but the down tree is S. 59 degrees E., 102 feet. Using the record distance and bearing to locate the section corner from the bearing tree in the southeastern quadrant does not check with a real old stump in the northwest quadrant. Further appellants state that Goodwin, in 1975, found a "geared axle" which has been generally accepted as the corner for 2, 3, 34, and 35, from which the original 30-inch, now 40-inch, white oak cut out to reveal the reverse scribing "B T" bears N. 73 degrees E., 133.4 feet (record N. 73 degrees E., 132 feet), and the 40-inch down oak in the southeast quadrant with visible scribe markings does not fit the record call.

[3] The Manual states that an existent corner is one whose position can be identified by verifying the evidence of the monument or its accessories, by reference to the description in the field notes, or located by an acceptable supplemented survey record, some physical evidence or testimony. An obliterated corner is one at whose point there are no remaining traces of the monument or its accessories, but whose location has been perpetuated, or the point for which may be recovered beyond reasonable doubt by the acts and testimony of interested landowners, competent surveyors, other qualified local authorities, or witnesses, or by some acceptable record evidence.

We find that the corner 2, 3, 34, and 35, was correctly perpetuated by the "geared axle," at a point the record distance and bearing from the bearing tree in the northeast quadrant marked by Ford in 1854, and that the Government corner marking the point was placed at the proper situs. The tie to

the remaining standing bearing tree in the northeast quadrant is adequate to substantiate the location of the corner.

Appellants argue that the BLM administrative survey in 1975 was based on a point west of the "geared axle." However, that administrative survey was not based upon any statutory authority to establish the boundary of Federal lands. Administrative surveys are supposed to follow established cadastral survey lines. They do not establish or reestablish any legal corner monuments. Whatever reasons prompted the 1975 administrative survey, it could not effect any change in the lines established by the official cadastral survey in 1854.

Appellants also are under a misapprehension that "tags" on trees indicate that the tree so marked is a "bearing tree." A "bearing tree" is usually a tree within three chains of the corner to which it is witness. The field notes will contain a description of the bearing tree, giving species, diameter breast height, the exact direction from the corner monument, the horizontal distance to the center of the tree, and a description of the exact marks scribed onto the tree for identification of the corner. Merely because a tree has borne a "tag" does not mean that it was a "bearing tree." Unless the legend on the tag is shown, very little significance may be placed on such a tagged tree.

Appellants suggest that the "geared axle" has disappeared. The field notes of the Jelley-Rogers survey state that the axle was reset along side the Government corner monument, where, presumably, it still reposes.

Resurvey of the section line between secs. 2 and 3 was commenced at the section corner for secs. 2, 3, 10, and 11, as that corner had been perpetuated by Floyd W. Cole, Deputy County Surveyor, in 1923, and thereafter recorded by Arthur Boyd, Registered Engineer No. 1581, in 1957, and again recorded by Glenn S. Baughman, Registered Land Surveyor No. 536, in 1980. Evidence of the original bearing trees was noted in the places described in the original field notes of survey. The section line was then run N. 8 degrees 49' E., to the S 1/16 corner of secs. 2 and 3, established by Baughman in 1980, where a Government corner post was placed alongside the iron rod set by Baughman. Thence N. 8 degrees 47' E., 20 chains to the point for the N 1/16 corner of secs. 2 and 3, where a Government corner post was placed. Thence N. 8 degrees 47' E., 20.14 chains to the section corner of secs. 2, 3, 34, and 35.

[4] In challenging a Government resurvey, appellants have the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the original survey. Bethel C. Vernon, 37 IBLA 226 (1978). We are unable to see any place where the dependent resurvey under attack did not follow the Manual. Reading of the field notes does not disclose any error on the part of the Government cadastral surveyors. They considered all relevant evidence before accepting the corners recorded by the private surveyors. The allegations of appellants do not overcome the recorded performance of the Government cadastral surveyors.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE IRWIN CONCURRING:

In the early 1970's the BLM district office conducted an "administrative survey" to discover the boundary line between secs. 2 and 3 of T. 29 S., R. 7 W., and marked a line by tagging several trees and clearing. It is this line the Koopmans saw and believed to be their property line when they purchased their land in 1979. Later it was determined that the administrative survey was erroneous and that the resulting line was mistaken. The line established by the subsequent (1981) dependent resurvey as being the proper one cuts several acres off the northwest corner of the Koopmans' tract, acres on which they intended to harvest trees they believe belong to them.

The crux of the matter before us is the location of the corner of secs. 2, 3, 34, and 35, the northwest corner of the Koopmans' tract. The Koopmans contend that the geared axle relied on as a monument by BLM could not have been placed before 1899, when it was first noted, on the doubtful assumption that there were no such things as geared axles then. They also point to a large madrone tree as the one that marks the location of the quarter section corner to the south. The difficulty with the Koopmans' position is that the axle does correspond to the location of the section corner, measured from the one remaining bearing tree that does have scribe marks, and that the tree they point to bears no scribe marks.

I do not doubt the sincerity of the Koopmans' belief that the madrone tree is the true indicator of the quarter section corner or that BLM's behavior in this dispute has not been impeccable. But this belief cannot overcome BLM's determination that the section "existent corner", *i.e.*, the axle, is verified by its accessories, *i.e.*, the 42-inch oak with scribe marks that is 200 links distant 73 degrees to the northeast, and by several supplemental surveys. Under these circumstances, the resurvey conducted by BLM must be upheld. See Manual of Instructions for the Survey of the Public Lands of the United States, U.S. Department of the Interior, 1973, chapter 5-5, at 130. The fact that BLM's location of the section corner is a few inches off the original calls does not justify abandoning it in favor of the Koopmans' belief that it should be several feet to the west.

Will A. Irwin
Administrative Judge

